



Order Filed on November 12, 2020
by Clerk
U.S. Bankruptcy Court
District of New Jersey

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

DAMIEN N. TANCREDI, ESQ. (DNT 1383)
FLASTER/GREENBERG P.C.

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Counsel for Debtors in Possession

In Re:

SMS ENTERPRISES, INC. *et al.*,

Debtors.

Honorable Andrew B. Altenburg, Jr.

Chapter: 11

Bankr. No.: 19-21332 (ABA) (Jointly
Administered)

Hearing Date: November 10, 2020

ORDER GRANTING DEBTORS' MOTION TO DISMISS

The relief set forth on the following page, numbered two (2) to four (4), is hereby ORDERED.

DATED: November 12, 2020


Honorable Andrew B. Altenburg, Jr.
United States Bankruptcy Court

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Debtor: SMS ENTERPRISES, INC. *et al.*

Case No.: 19-21332 (JNP)

ORDER GRANTING DEBTORS' MOTION TO DISMISS

Upon Consideration of the Debtors' Motion¹ to Dismiss; and it appears that the Court has jurisdiction over this matter; and for good cause shown it is ORDERED;

1. The Motion is GRANTED to the extent set forth herein.
2. The Debtors cases are hereby dismissed, effective November 13, 2020.
3. The Debtors shall file all outstanding monthly operating reports with the Court including September 2020 and October 2020, provide disbursement information for November 2020 to the Office of the United States Trustee and are authorized and directed to pay all statutory quarterly fees to the Office of the United States Trustee within 15 days of the entry of this Order (the "US Trustee Fees"). Such funds in the estimated amounts of \$7,255.43, \$3,631.32 and \$975 are being held by Flaster/Greenberg, P.C. in its attorney trust account and shall not be used to fund any Administrative Expenses, Reserves, the NJ Payment or the OnDeck Payment. To the extent the estimated amounts are more than set forth above, the Debtors shall make sure that sufficient funds will be set aside to fund the US Trustee Fees. To the extent the Debtors fail to file monthly operating reports, fail to provide disbursement information, and fail to pay US Trustee Fees, the cases can be reopened and converted to chapter 7 cases *nunc pro tunc* to the date this Order is entered upon submission of a certificate of default by the United States Trustee, by and through counsel, on five business (5) days' notice to the Debtors and the Debtors' counsel, without the need for filing a separate motion to reopen the case. The Debtors consent to the reopening of these cases and conversion to chapter 7 pursuant to these procedures.

¹ Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Motion.

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4. The Debtors are authorized and directed to pay all administrative expenses due to the Debtors' professionals, Flaster/Greenberg, P.C. and WithumSmith+Brown, P.C. that have or will be approved by order of this Court (the "Administrative Expenses").

5. The Debtors are authorized to pay the amount of \$19,000.00 in trust to Flaster/Greenberg, P.C. to be allocated in the following matter: (i) \$5,000 to be used in legal fees and expenses payable to Flaster/Greenberg, P.C. in order to wind up these cases and file appropriate dissolution proceedings; and (ii) \$14,000.00 to be used in fees and expenses payable to WithumSmith+Brown, P.C. in order to file any remaining monthly operating reports, tax returns, and other documents needed to effectuate the dissolution of the Debtors (the "Reserves"). The fees and expenses described in this paragraph shall be payable to Flaster/Greenberg, P.C. and WithumSmith+Brown, P.C. without further order of the Court. To the extent funds remain from the Reserves, such funds shall be used to fund the other claims included in this Order.

6. The Debtors are authorized and directed to pay the State of New Jersey on account of its priority tax claim to the extent such funds remain in the Debtors' estates following payment of administrative expenses and US Trustee Fees (the "NJ Claims").

7. The Debtors are authorized and directed to pay OnDeck Capital, Inc. any funds remaining in the Debtors' estates after the payment of the Administrative Expenses, the Reserves, and the US Trustee Fees (the "OnDeck Payment").

8. The Debtors are authorized and directed to pay the Administrative Expenses, the Reserve, the NJ Payments, and the OnDeck Payment, on or before December 31, 2020, and

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ORDER GRANTING DEBTORS' MOTION TO DISMISS

shall file a certification with the Court confirming that the Administrative Expenses, the US

Trustee Fees, the Reserve, the NJ Payments, and the OnDeck Payment are made.

9. The Court retains jurisdiction to adjudicate any dispute arising from this Order.